tainers to the camp and all persons accompanying or serving with the armies of the United States without the territorial jurisdiction of the United States, and in time of war all such retainers and persons accompanying or serving with the armies of the United States in the field, both within and without the territorial jurisdiction of the United States, thought not otherwise subject to these articles." The words *"acompanying or,"* were not in the old article, number 63. Two recent cases applying this subdivision are of interest. G, a civilian employee of the U. S. Shipping Board, went to Europe as a mate on a military transport; he was there discharged, and sent back to the United States on another transport. He volunteered to stand watch on the vessel, and did so for several days, but finally refused to continue. For this disobedience to the order of the army officer in command of the vessel, he was tried by court-martial and sentenced to five years' imprisonment. On *habeas corpus* (after reaching the United States), it was held he was "accompanying" the army, "voluntarily serving with it," "in the field," and was punishable as a person "subject to military law" under this article. *Ex parte Gerlach* (1917), 247 Fed. R. 616.

F applied to the Bureau of the U. S. Army Transport Service, which is under the Quartermaster's Department, for employment, was accepted, entered into an agreement to serve, and was assigned to duty as chief cook on a steamship then lying at Brooklyn, engaged in transporting supplies for the U. S. Army. Just before the ship sailed for a foreign port, F attempted to leave the ship with his baggage to desert the service, and refused to return thereto. He was arrested by the military police, sent to Camp Merritt, N. J., and tried by a court-martial. He sued out a writ of *habeas corpus*: *Held*: Although a civilian employee, he was "serving with the armies in the field," and a court-martial had jurisdiction to try him for his attempt to desert; also he can not question the jurisdiction of the court-martial to impose the death or other penalty (A. W. 58), on the ground that he was not charged "on a presentment or indictment of a grand jury," under the Fifth Amendment to the United States Constitution, since that expressly excepted "cases arising in the land or naval forces." The court says the words *"in the field,"* do not refer to land only, but to any place, whether on land or water, apart from the permanent cantonments or fortifications where military operations are being conducted."

RATES OF PUBLIC UTILITIES—RIGHT OF CARRIER TO REPARATION WHEN COMPELLED TO CARRY AT CONFISCATORY RATE.—The case of *M. St. P. & S. S. M. Ry.* v. *Washburn Lignite Coal Co.*, (N. D.), 168 N. W. 684, is an echo of the *Lignite Coal Case*, 236 U. S. 585. The latter case decided that the rates fixed by the legislature of North Dakota for the carriage of lignite coal were confiscatory, and dissolved an injunction restraining the carrier from charging more than the statutory rates. The present case is an action to recover from the coal company $2,6000, the alleged difference between the statutory rate and a reasonable rate for carrying coal for defendant company while the injunction was in force. It has often been held that a shipper paying under protest more than a reasonable freight rate may recover the excess. The question here is

can a carrier recover a deficiency when it has been compelled by action of the court to carry at a confiscatory rate. The positions seem reciprocal, but some very nice questions are raised. The court held, *Robinson J.* dissenting, that there could be no recovery by the carrier.

Beginning with the *Knoxville Water Case, 212* U. S. 1 and the *Consolidated Gas Case, 212* U. S. 19, the Supreme Court of the United States has often decreed an experiment to determine what would be the returns from certain rates, without prejudice to the right of the public utility to reopen the case if adequate trial proves them non-remunerative. The most important of these cases are referred to in the instant case. Of these the *Lignite Coal Case, supra,* was one in which the United States Supreme Court, after the experiment, found the trial rates confiscatory. Plaintiff by decree of court was coerced to carry at those rates, it was thereby deprived of its property, can it now recover the loss? The court finds there is no tort liability of defendant. Liability, if any, must be contract. There was no express contract to pay a higher rate, and it seems unreasonable to hold there was an implied one. There is complete absence of any implied consent of defendant to pay further freight bills if the litigation should finally prove the company had a right to a higher rate. His contracts with his customers were probably based on the tariffs he paid, and not on any implied promise to the carrier to pay a higher charge, if after years of litigation it should be decided the tariff was too low. Perhaps the most interesting suggestion of the case is that here is a contract by operation of law, a case of unjust enrichment. The court finds that to allow this would give plaintiffs a remedy against one who has done no wrong, and who would be unable to recoup his loss from those who had really benefited, the consumers of the commodity. What protection, then, shall public utilities have against such deprivation of property. They have sometimes been allowed to charge the higher rate ,giving the public rebate slips, 16 MICH. L. R. 379. The court might of course protect them by the form of the decree. Where one of these means is not permitted it seems to be a case of *dammum absque injuria.*

SALES—IMPLIED WARRANTY OF WHOLESOMENESS—CANNED GOODS.—The plaintiff bought a can of baked beans from the defendant who was a retail dealer. The brand was of a widely known variety. While eating the same the plaintiff broke his tooth on a pebble which was proven to have been among the beans in the can. An action was brought on the implied warranty that the beans were wholesome and fit for consumption. The Code provided that "where the buyer, expressly or by implication, makes known to the seller the particular purpose for which the goods are required, and it appears that the buyer relies on the seller's skill or judgment, whether he be the grower or manufacturer, or not, there is an implied warranty that the goods shall be reasonably fit for such purpose." *Held,* for plaintiff. *Ward* v. *Great Atlantic & Pacific Tea Co.,* (Mass. 1918), 120 N. E. 225.

The code is but declaratory of the common law. *Cook* v. *Darling,* 160 Mich. 475, 481. Where the particular purpose is the consumption as food, the food must be wholesome. *Barrington* v. *Hotel Astor,* 171 N. Y. Supp.